

SUBMISSION OF THE PROVINCE OF MANITOBA

TO THE HOUSE OF COMMONS

STANDING COMMITTEE ON TRANSPORT

COVERING

BILL C-18 - AN ACT RESPECTING NATIONAL
TRANSPORTATION

AND

BILL C-19 - AN ACT RESPECTING MOTOR
VEHICLE TRANSPORT BY
EXTRA-PROVINCIAL
UNDERTAKINGS

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Presented by
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EXECUTIVE SUMMARY

Introduction

Mr. Chairman and members of the Committee, welcome to Manitoba.

I was pleased to note that your Committee endorsed a number of the recommendations contained in our submission on "Freedom to Move". I hope that we can look forward to the same consideration with respect to the issues currently before us.

The Government of the Province of Manitoba appreciates the opportunity to present our views on the legislation proposed for enactment in Bills C-18 and C-19. Our interest is stimulated by our dependency upon efficient and low cost transportation to access distant markets. In addition, transportation represents 15% of our provincial economy. It also provides 30,000 highly valued jobs.

Winnipeg's role as a historic centre for transportation is reflected in the fact that it is the second largest rail hub in Canada. Nine of the 15 largest Canadian trucking companies are headquartered here. We are pursuing the maintenance and growth of this important economic base through a number of programs including economic development agreements with the federal government.

The Government of Manitoba has for years promoted changes to the existing legislation in order that transportation might play a more significant role in development as well as to provide captive shippers with increased protection. We do not, however, support deregulation. Regulatory controls are mandatory in the absence of a mature and uniform mix of industry and competition. Canada is not blessed with this status.

Concerns have been registered over the potential negative impacts of the proposed legislation by carriers in the air, truck and rail modes as well as by transport sector employees. These concerns should not be ignored.

Mr. Chairman, you are well aware of the statements by the railways of their intentions to dismantle half of Canada's rail network. CN also plans to lay-off 15,000 employees. Lay-offs have also been prevalent in the air mode. We urge you to consider the serious hardships that are being experienced by these employees and their families. We would also ask you to consider the long term impact of carrier cost reduction on services to small and remote communities.

We find these responses to the proposed legislation to be a serious violation of Mr. Mazankowski's commitment of orderly and evolutionary change. Recent events and announcements would lead us to the conclusion that Canadians are being exposed to disorderly and revolutionary change rather than the committed orderly and evolutionary process. The concentration within the air mode, the proposed dismantling of much of our rail system and extensive layoffs are not in keeping with the spirit of "Freedom to Move".

It is essential that corrective action be taken to minimize the harsh impacts of the proposed legislation. As outlined in our previous submissions, protection of the public interest demands that we pursue an agreement with the United States on trade in transportation. This agreement would seek safeguards to guarantee minimum levels of Canadian participation in transportation within our borders. It would also limit unfair retaliatory action by the U.S. in response to measures taken to introduce safeguards essential to the protection of Canadian interests. In addition to ensuring that service is provided by Canadians for Canadians, this would also enable Canada to maintain control over transportation within its borders. This agreement must be in place before Bills C-18 and C-19 are implemented.

Programs must be established to provide protection for transport sector employees including job security, retraining programs and relocation assistance. Small communities and small shippers must be protected against loss of service as well as excessive fares and rates.

Mr. Chairman, we are concerned that in the longer term, the introduction of the short line rail concept will have the effect of transferring the federal responsibility for the operation of branch lines to the provinces and municipalities. We are also concerned that the opportunity to abandon branch lines will be much broader thereby increasing highway construction and maintenance costs to the province and municipalities.

Clearly, this will result in inequitable levels of service and a widening of the opportunity gap between the "have" and the "have not" provinces. This is contrary to the underlying principle that Canada's transportation system be a tool for regional development.

I am pleased to note that Mr. Crosbie continues to promote safety in transportation which has resulted in additional staff being assigned to air safety and initiatives to update safety regulations applying to the various modes.

We strongly disagree with the railways' position on competitive line rates, third party redress for confidential contracts, arbitration and a streamlined public interest appeal process as set out in the proposed legislation. Section 279 of the Railway Act which enables the railways to set common rates is to be repealed and Agreed Charges are expected to disappear in the new environment. As a result, small and captive shippers will no longer be able to benefit from rates negotiated by larger and more powerful shippers. In addition, they will be unaware of the rates charged their competitors when such rates are contained in a confidential contract. The absence of group rates and Agreed Charges will leave the small and captive shipper at the mercy of the railways. We cannot condone an environment in which the railways are able to maintain or increase their undue exploitation of monopoly situations and discourage development. This will transpire unless competitive line rates and the other redress provisions contained in Bill C-18 are retained.

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Recommendations dealing with specific sections of Bills C-18 and C-19 follow:

Bill C-18

An Act Respecting National Transportation

I. Transportation Policy

- policy and regulatory changes must serve the socio-economic needs of Manitobans and Canadians;
- caution is required in introducing the new transportation environment to protect the interests of users, employees and the transportation system;
- commercial viability of transportation links must be balanced with regional economic development objectives;

II. National Transportation Agency

- regional offices should be established; including one in Winnipeg;
- sufficient resources must be made available to monitor and evaluate the impact of regulatory changes. Regional monitoring offices should be established in order to effectively administer this most important program. Winnipeg would be an ideal location for a regional monitoring centre.

III. Arbitration

- the agency should pay the arbitrator's fees;
- the potential impact on carrier revenues should not restrict shipper access to arbitration;
- ground rules are required to provide for fair, equitable and expedient proceedings;
- adequate rail cost disclosure is necessary to provide a more equitable balance in freight rate negotiations;

- the criteria to be considered by the arbitrator should be revised to provide for more equitable and efficient arbitration proceedings;
- shippers and carriers must be permitted to adjust their final offers up to three days before the scheduled arbitration.

IV. Air Transportation

- specific guidelines are required as to the conditions which must be met to qualify for subsidized air services;
- the carriers and provinces must have a voice in air bilateral negotiations;
- in view of the growing concentration of airlines there must be provision for rate and service regulation in circumstances where airlines are taking undue advantage of a monopoly environment.

V. Railway Transportation

A. Tariff Publication

- tariff publication should be mandatory to assist small and captive shippers. This would include the publication of non-confidential information in confidential contracts.

B. Rail Line Abandonment

- railways should be compensated for losses incurred on all lines retained in the public interest;

- the provinces and municipalities must receive compensation for the additional costs transferred to the highway system as a result of rail line abandonment;
- the agency should only consider those costs which would have been avoided had a line been abandoned;
- shippers on short lines should continue to have access to competitive line rates over the same routes they would have accessed when the line was operated by a major railway;
- the matters to be considered by the Governor in Council for retaining uneconomic lines should be amended to provide that the public interest be the sole consideration;
- Section 172(2)(b) enables the provinces and municipalities to assume branch line deficits to maintain a line. If a line which is required is incurring an actual loss, it should be incumbent upon the Government of Canada to assume both the deficit and the jurisdiction of that line. This is essential to providing a fair and equitable system across Canada.

VI. 1992 Review

- the review should include an evaluation of the impact of the legislation on the well being of the transport industry, shippers, small and remote communities and transport employees.

Bill C-19

An Act Respecting Motor Vehicle Transport

- the automatic sunseting of the shifted burden of proof entry regime imposed by Section 30 must be deleted. This is in conflict with the agreement signed by the federal, provincial and territorial transport ministers February 27, 1985. This clause prejudges the issues and forecloses the application of any remedial action which may be necessary in the new environment;
- Section 7(3) and (4) should be amended to enable interested parties to intervene in opposition to applications for operating authority where they can establish that the granting of the application would be "potentially" detrimental to the public interest;
- Section 7(3) should also be amended to ensure that the fitness of the applicant will continue to be a criterion in applications for operating authority;
- Section 7(4)(b) should be amended to permit a regulatory board to consider the economic or social development of a province or region (this is the basis on which we agreed to sign the memorandum of understanding);
- transport boards must be allowed to attach conditions to licenses covering such matters as dangerous goods, compliance with weight limits and fuel tax laws;
- a provincial transport board should be allowed to accept the findings of other provincial transport boards respecting licensing and fitness criteria;

- a bilateral agreement must be struck with the United States to provide for a reasonable level of Canadian control of our trucking operations and capacity. As an essential element of national interest we must seek an agreement to ensure that the Canadian trucking industry is able to compete with the American industry. Your Committee supported this need in your report on the "Freedom to Move" paper.
- the National Safety Code must be implemented before introducing the new "reverse onus" entry regime proposed in Bill C-19. Without increased safety standards and enforcement, competition may lead to a significant deterioration of safety on the nation's highways. The costs of implementing the safety code must be the responsibility of the federal government.

Clearly, the legislation must be flexible to adapt to problems of users, carriers, labour and the public as well as to meet regional economic development requirements. We also ask that you recommend programs to protect transport sector employees including job security, retraining programs and the provision of alternate employment. The new regime must not place excessive reliance on competition as an alternative to effective regulatory controls in view of the limited level of competition in Canada.

1. Introduction

Mr. Chairman and members of the Committee. Welcome to Manitoba. We appreciate the opportunity to appear before you to present the views of the government of Manitoba on Bills C-18 and C-19.

In our November, 1985 submission on "Freedom to Move" we stated that our dependency upon efficient low cost transportation and effective transportation policy is based on the long distance to markets for Manitoba products and our reliance upon rail transportation. We also pointed out that transportation was an extremely important factor in our economy providing 30,000 jobs and representing 15% of our provincial economy. Furthermore, Winnipeg is the second largest rail hub in Canada. Nine of the fifteen largest interprovincial Canadian trucking companies are headquartered here.

The Government of Manitoba continues to oppose deregulation since Canada is not blessed with an extensive and mature mix of industry and competition.

We have, however, supported the need for policy and regulatory changes in transportation to meet the long term socio-economic needs of Manitobans and Canadians. We must express concern, therefore, over the fact that air, rail and highway carriers have stated that the pending proposals for deregulation will have a negative effect on their operations. In order to survive in the proposed transportation environment, carriers have embarked on programs to reduce costs.

The railways, for example, have announced intentions to dismantle at least half the nation's rail network. CN has also stated they will be laying off another 15,000 employees. The airlines have been consolidating operations and reducing staff levels. The trucking and rail sectors claim that they will be unable to compete successfully against the much larger and more powerful U.S. carriers. While the actions being taken by the carriers may be helpful in guaranteeing their survival, it is resulting in serious hardship on transport sector employees and their families. Corrective measures are obviously required

We are extremely alarmed that deregulation as proposed in Bills C-18 and C-19 encourages free trade in the provision of transportation services without adequate mechanisms to ensure that Canadian carriers are able to compete on equal footing with U.S. carriers. Our highway and air carriers do not have the advantageous economies of scale of their U.S. counterparts. U.S. railways will have freer access to the Canadian market. We cannot over-emphasize the fact that it is mandatory in the public interest to pursue an agreement with the United States on trade in transportation before the legislation is passed. This agreement would seek safeguards that would guarantee minimum levels of Canadian participation in transportation within our borders. Reciprocity would be the key to providing a more reasonable balance for the Canadian transportation industry. The agreement would also limit unfair unilateral retaliatory action by the United States in response to measures taken to introduce safeguards essential to the protection of Canadian interests.

Programs must be established to provide protection of transport employee interests including job security, retraining programs and absorption of relocation expenses. Small communities and small

shippers must be protected against loss of service and excessive fares and rates.

We also believe that it is vital to ensure that safety is not sacrificed in the new regime. In this regard, I was pleased to learn that staff assigned to air safety has been increased. I was also pleased to note the recent announcements by Mr. Crosbie regarding recommendations for improvements in rail safety.

The primary objective of the new regime must be to develop a system that is fully supportive of regional economic development goals and employment. With respect to rail transportation, we must be careful not to encourage a scenario whereby the railways, through selective and discriminatory pricing, determine what resources and manufacturing sectors will be developed and where they will be located.

Transportation policy must promote economic development throughout all regions of Canada and not only in a few select areas or on select movements or commodities. It was for this reason that on August 21, 1985, Canada's premiers issued a communique asking that the new legislation stipulate:

- (a) that transportation be recognized as a key to regional economic development; and,
- (b) that commercial viability of transportation links be balanced with regional economic development objectives in order that the potential economic strengths of each region may be realized.

We are pleased to note that the first part of this recommendation has been included in Bill C-18. We urge you to include the second part of this important objective.

This requested addition is consistent with the intent of the new regime to make Canadian shippers wherever located, more competitive in the international market.

Efforts to establish a more competitive environment have created an element of uncertainty for carriers, employees and users. Since the stakes are high, genuine concern is to be expected. Therefore, it is not surprising that the railways are lobbying for changes that would enable them to continue exploiting captive shippers while, at the same time, becoming more competitive through confidential contracting. Because of the expanded competitive opportunities given to the railways under the new legislation, we are not fully convinced that Bill C-18 will have the adverse impact on rail revenues to the extent claimed by CN and CP. No doubt the railways' desire to take advantage of these competitive opportunities will determine, to some extent, their relative success in the new regime. However, as stated earlier, the potential for any undue exploitation or dominance by U.S. railways in the Canadian market must be eliminated through an agreement on trade in transportation with the U.S.

We believe that the railways, by demanding restrictions and limitations to shipper protection and redress as set out in Bill C-18, are overlooking the long-standing dissatisfaction of many shippers to existing legislation. The complaint of these shippers has been that the existing legislation enables the railways to be unresponsive to requests for rate or service adjustments. A rebalancing of the position between railways and captive shippers is necessary.

In view of the foregoing, we ask that the government of Canada proceed cautiously in introducing the new transportation environment to protect the integrity of users, transport employees, and the transportation system.

Our recommendations with respect to specific changes in the proposed legislation follow. We would urge you to endorse these changes. Finally, given the broad and sweeping impacts of transportation on both the social and economic fabric of Canada, we believe that the system must be sufficiently flexible to allow for amendments to be made to the Act in order to respond to specific problems as they arise.

BILL C-18

An Act Respecting National Transportation

II. National Transportation Agency

1. Provisions should be made for all regions of Canada to be represented in the new Agency.
2. The Bill should stipulate that regional offices of the Agency are to be established. This provision is currently set out in Section 13(2) of the 1967 Act.
3. A regional office should be located in Winnipeg in view of the extensive transport related business activity that is centred here.
4. Sufficient staff and financial resources must be made available to the Agency, the Minister and system interests to monitor and evaluate the impact of regulatory changes as well as to recommend appropriate amendments as required.

III. Arbitration

1. Section 48(2)(c) and Section 53(1) should be changed to eliminate the demand for shipper contributions to the arbitrator's fees.

This requirement could be a deterrant to applications for prompt and effective redress.

2. An exception to Section 48(3)(b) is recommended as follows:

"The amount of revenue in issue should not of itself be a justification for precluding arbitration as set out in this section."

Without this exception the railways, on the basis of the amounts involved, could argue that almost any dispute involved the public interest and thereby request that the matter be referred for processing under Section 59. Many shippers would be forced to withdraw their appeals for relief due to the high cost and complexity of public interest proceedings.

3. Procedures outlined in section 50 should be expanded to establish a clear set of ground rules to provide for fair, equitable and expedient proceedings. Manitoba believes that mandatory disclosure of rail costs is necessary to provide shippers with more equitable footing in rate negotiations. We would draw your attention to the fact that although the level of intermodal and intramodal competition in the United States is far more intense than it is in Canada, cost disclosure is provided for in the United States.

If shippers do not have access to adequate information they could unknowingly be seeking the introduction of a non-compensatory rate. Accordingly, the arbitrator would be compelled to find in favor of the rates offered by the railway even if the rate was known to be prejudicial to the shipper.

In order to ensure the necessary exchange of information in a timely manner before an arbitration we recommend the following additions to section 50:

"(3) Within fifteen days of the Agency referring the matter for arbitration, the parties shall exchange the information which they intend to submit to the arbitrator in support of their final offers."

"(4) Within seven days of receipt of the information referred to in (3) each party may direct interrogatories to the other which shall be answered within fifteen days of receipt thereof."

"(5) If a party unreasonably withholds information that is subsequently deemed to be relevant by the arbitrator, such withholding shall be taken into account by the arbitrator in his decision."

4. Section 51 should be amended to ensure that the arbitrator has access to all data that is relevant to the case at hand, including confidential contracts and rail cost data. It is also desirable to eliminate non-essential or irrelevant criteria from the arbitrator's consideration. Specifically:

i. In 51(2) starting in the third line the words "whether there is available to the shipper an alternative, effective, adequate and competitive means of transporting the goods to which the matter relates" should form a sub-clause. The words "and to" immediately following "to which the matter relates" should be deleted.

The effect of this amendment would enable the arbitrator to exercise his discretion having regard to this consideration, along with the other list of considerations, whenever relevant and in the absence of an agreement to the contrary by the parties.

To give this issue pre-eminence would likely result in every arbitration being encumbered by a two stage procedure. The first would entail a detailed investigation of the competitive circumstances whether this issue was relevant or not. The railways could be expected to attempt to defeat every arbitration on this ground and would, therefore, make it a major issue in each arbitration. The second aspect of the arbitration would entail a consideration of the enumerated paragraphs.

To avoid this, it would be preferable to designate the competitive issue as one of the enumerated considerations to be taken into account when relevant.

- ii. Paragraphs (a) and (b) should be combined in a new paragraph (b). [The new paragraph (a) would be the paragraph dealing with competition referred to above.] Costs and efficiencies deal with the same subject matter. Moreover, efficiencies should be considered regardless of whether they are instituted by the shipper or the carrier.

The new paragraph (b) should read as follows:

"(b) changes in the cost of providing the transportation service to which this matter relates including any efficiencies in the provision of the transportation service;"

Paragraph (c) refers to the relative profitability of different traffic to the carrier. In fact, this profitability is measured by contribution over variable costs, i.e., contribution to constant costs.

Paragraph (c) should be revised as follows:

"(c) the contribution to the carrier from the transportation of the goods to which the matter relates in comparison with the carrier's contribution from the transportation of other goods;"

Paragraph (d) refers to the economic viability of the shipper and carrier. The reference to the carrier is redundant.

The viability of the carrier is adequately addressed under paragraph (c) wherein the contribution made by the traffic in question is to be compared with the contribution from other traffic. If carrier viability remains a specific criteria for each rate arbitration, relief under final offer arbitration would be made totally unavailable as long as the carrier was not earning its cost of capital. It would be inappropriate to weigh the economic viability of the carrier against the position of a shipper on a specific freight rate dealing with only one component of the railway's total traffic.

Paragraphs (d) and (g) should be combined as follows:

"(d) the ability of the shipper to compete, having regard to his long term economic costs and the national and international market conditions that pertain to the goods to which the matter relates;"

5. The present wording of Section 52(1) does not permit a shipper or carrier to adjust their final offers based upon the

information that will have been exchanged under Section 50. Section 52 should stipulate that the shipper and the carrier can exchange final offers up to three days before the scheduled arbitration.

Section 52(1) (a) and (b) should be amended as follows:

- "(a) the shipper shall be the shipper's final offer set out in the submission to the Agency under subsection 48(1); or such other offer as the shipper, at least three days prior to the scheduled commencement date of the arbitration, specifies in writing to the carrier and the Agency as the shipper's final offer; and
- (b) the carrier shall be the last offer received by the shipper from the carrier as set out in the submission to the Agency under subsection 48(1) or such other offer as the carrier, at least three days prior to the scheduled commencement date of the arbitration, specifies in writing to the shipper and the Agency as the carrier's final offer."

6. Section 62(2) should be amended as follows:

- "(2) In conducting the investigation, the Agency may take into consideration the contents of any confidential contract that has been filed with the Agency in in-camera proceedings as referred to in Section 22(1)(b)."

Information access is mandatory to the successful introduction of relief for captive shippers from unfair treatment by carriers. This includes the need for cost disclosure, mandatory tariff publication of all rates other than contract

rates and, finally, the publication of a summary of confidential contracts which would disclose at least the commodity, origins, destinations and parties to the contract. Particulars as to rates, volumes and discounts or rebates would not be disclosed to other shippers but would be available to the Agency, the arbitrators and shippers' agents in rate appeals. In such instances, the shippers' agents would not be allowed to disclose particulars to the shipper.

IV. Air Transportation

1. With respect to northern and remote services, Section 85 of the Bill includes special provisions for federal subsidization of services where shortfalls occur. Specific guidelines must be included in the proposed section to stipulate conditions under which programs will be introduced as well as outlining the specific procedural steps for applications.
2. The Act should contain a provision to ensure that the provinces and the airlines are kept fully informed of bilateral discussions and proposals. They would then be able to formally communicate their views in advance of air bilateral negotiations.
3. The Act should also have a mandatory requirement for the carrier to provide service, or otherwise have the licence made available to other Canadian based carriers.
4. In our November, 1984 submission on "Freedom to Move" we noted, with interest, the increased concentration of Canada's airline industry. We must now express grave concern for this concentration which has now reached a fever pitch and has affected most carriers in Canada. In preparation for

deregulation, air carriers of all sizes have been "positioning" themselves to be able to take advantage of any opportunity that might present itself. We have witnessed the results of this "positioning" as one carrier after another has fallen victim to deregulation and has been swallowed by a competitor.

(1) Although more than 100 airlines were formed after Congress deregulated the U.S. airline industry in 1978 only about 40 of these are still operating. Thirty-six U.S. air carriers have sought bankruptcy court protection in the past eight years, while 26 others have been acquired by competitors. As outlined in our submission on "Freedom to Move" and supported by pertinent data, the airline industry in the U.S. is in turmoil due to deregulation. Smaller communities in the U.S. have experienced loss of service, disproportionate fare structures and airline failures. We have been cautioned by U.S. industry experts not to run head long into deregulation and to examine more closely the option of liberalization. A commentary on the U.S. deregulation experience has been that it has produced only one benefit: (2) "A few low fares, for a few people to a few places, sometimes, for a while."

- (1) As reported by the Associated Press in the September 9, 1986 issue of the Globe and Mail.
- (2) Globe and Mail November 11, 1986 quote attributed to John Nance, aviation expert and author.

Increased competition was a key phrase in "Freedom to Move". How can we have increased competition when we reduce our air industry to two super-powers and a mere handful of unaligned small carriers.

Because of the growing concentration in the airline industry monopoly situations may arise. We are not satisfied that potential competition will effectively ensure adequate service and rate levels, especially in smaller markets. For this reason, provision should be made for residual regulatory control over rates and service in non-competitive situations.

V. Railway Transportation

A. Tariff Publication

Section 115 should be amended to make tariff publication of all rates other than confidential contract rates mandatory. All published tariffs would be made available to the public. Rate transparency is required for the protection of small shippers.

B. Competitive Line Rates

1. Section 137(5) should be amended to delete the words "the total amount of revenue received" and substituted with the words "the net revenue received". This would ensure that railways calculate the net amount received including appropriate allowances for rebates and discounts.

C. Railway Lines - Rail Line Abandonment

The objectives of efficiency, while important, must be balanced with regional economic development objectives in order that the potential economic strengths of each region are realized. In the case of the abandonment of rail lines, Manitoba submits that the overriding consideration must be the public interest.

We submit that it would be unfair to the carriers and many shippers to require the railway to absorb, or pass on to shippers, the losses incurred on lines other than branch lines. Financial assistance must be available where any line is required to be retained in the public interest and is incurring an actual loss.

When rail lines are abandoned, the burden of cost is transferred from the railway to the highway. The rail line abandonment provisions are too restrictive as they relate only to costs incurred by a railway in the operation of the line. They do not provide for payment of the additional costs incurred by the owners and maintainers of alternative facilities. In the case of the province of Manitoba or its municipalities this inevitably means that additional costs are incurred for road capital and maintenance. The costs that are to be avoided by the railways in the case of abandonment are, therefore, offset by the additional costs to be incurred by the province or its municipalities. This cost transfer to the provincial government is not acceptable without a firm commitment by the federal government to assume the burden of those costs.

In determining the actual railway losses, the Agency should take into consideration only those costs which would have been avoided had the line been abandoned. This has been the approach that has been adopted for many years and is intended to ensure that the railway neither gains or loses from the retention of a line.

Section 157(3) should be amended by adding paragraph (f) as follows:

"(f)shall only include costs that would be avoided if the branch line were not maintained and operated."

It is essential that rail lines which are transferred or conveyed under section 158 remain under federal jurisdiction. This is provided for under section 174(6)(d) when a rail line is transferred or conveyed during the course of abandonment proceedings. Accordingly, a provision similar to section 174(6)(d) must be included in section 158.

If a rail line is transferred to a short line operator pursuant to Section 158, a shipper may be prejudiced in that he may only be entitled to a competitive line rate over the short line. Prior to the transfer he would have had access to a competitive line rate to a more distant interchange point with another major carrier. This opportunity should continue. Therefore, Section 158 should be amended by adding subsection (6) as follows:

"(6)The railway company which has conveyed the line shall, for the purpose of Section 134 to 142 inclusive, be deemed to be a local carrier for any shipper located along the line."

Section 159(3) does not render the subsidy provisions of Division II applicable to non branch lines (main lines). There is no rationale that can justify an arbitrary distinction between subsidizing branch lines and not subsidizing main lines. Therefore, Section 159(3) should be amended by deleting the first line thereof and substituting the words:

"All the provisions of Division II apply."

Section 160(5) should be amended by adding the words "including all existing shippers on the line who have shipped or received any traffic within five years prior to the date of the application."

Section 165 enables the Governor in Council only to order a line retained for five years in the case of branch lines that have been found to be uneconomic. The criteria included in Section 165 are so stringent that it is doubtful that any branch line could be ordered retained under this provision.

For example, it is unlikely that a branch line, let alone a segment of a branch line, would traverse a large region of Canada. Regional interests may very well require the retention of a branch line that does not serve a large portion of the region. It is also doubtful, except for remote areas in the north, that some sort of alternative transportation facilities would not be available. The interpretation of public interest, therefore, has been circumscribed to such an extent that the Governor in Council will likely find it impossible to order retention of virtually any branch line.

For this reason, Manitoba submits that paragraphs (b), (c), and (d) of Section 165(2) be deleted.

Section 172(2)(b) provides that a province or a municipality may undertake to pay an actual loss whereupon a branch line may be ordered to be retained in service. In such instances, the federal government will be transferring the financial burden of such lines to the provinces. Manitoba submits that there is good reason for continued federal jurisdiction over interprovincial railways. However, associated with that jurisdiction are the financial obligations that are attendant upon it.

While some provinces may be able to afford undertaking the obligation of uneconomic branch lines, Manitoba does not have the resources to do so. The provision is, therefore, contrary to the underlying principle that Canada's transportation system be a tool for regional development.

It is the "have not" regions that require federal financial assistance with respect to transportation. Under the proposal contained in Section 172(2)(b) the burden of support for regional development will fall solely on the provinces. For these reasons we submit that the reference to the provinces or municipalities in Section 172(2)(b) be deleted.

Finally, the provinces must be allowed to intervene in rail line abandonment proceedings.

VI. 1992 Review

1. The Bill must be amended to provide for input from all interested parties including the provinces, territories and users.

2. Amendments to the Bill are required to ensure that the review will consider the full impact of legislation on transportation employment in each mode, including relative staffing levels, changes in average wage rates and changes in working conditions. The review should also ensure that all shippers, especially those in small and remote centres, receive adequate service at rates that are fair and equitable.
3. The Review must also consider the relative health of the transportation industry in Canada and whether Canadian carriers are in a position to compete with foreign carriers.

BILL C-19

VII. An Act Respecting Motor Vehicle Transport by Extra-Provincial Undertakings

This Bill is seriously flawed and constitutes a breach of the terms of the Memorandum of Understanding on the Reform of Extra-provincial Trucking Regulation agreed upon by federal, provincial and territorial transport ministers on February 27, 1985. Our major concern is with respect to the automatic sunseting of the new shifted burden of proof entry regime imposed by Section 30 of the Bill. There was clearly no agreement by the Ministers to completely deregulate the system after three years or at any other specified time. To automatically sunset the new regime is to prejudice the issues and to foreclose remedial action which may become necessary. A course of action should not be "locked-in" in advance. Manitoba seeks the following amendments to the Bill:

1. Section 30 should be changed to read:

"The Governor in Council may, on the recommendation of the Minister (made after consultation by the Minister with the government of each province) and with regard to the findings of the review referred to in Section 266 of the National Transportation Act, 1986, by Order in Council made any time after January 31, 1993, declare that subsections 7(3) to (5) and paragraphs 8(1)(a) to (d) shall cease to have effect."

2. Manitoba agreed to sign the memorandum of understanding on the basis that an interested person would only have to demonstrate that the granting of an application would be "potentially

detrimental" to the public interest. Subsection 7(3) and (4) do not contain the word "potentially". Interested parties will, therefore, find it difficult - if not impossible - to present satisfactory evidence of actual detriment resulting from events which are yet to occur. Failure to insert the word "potentially" may make it even more likely that "reverse onus" will be tantamount to complete deregulation contrary to the spirit and intent of the memorandum of understanding.

3. Section 7(3) should be amended to delete the words "does not meet the criteria referred to in subsection (2) or is" and be replaced with the words "is unfit" to comply with the wording of the entry standards document adopted by the Council of Transport Ministers. This is essential to assess the impact of the operation on users and the public interest. It is also essential to allow a respondent to adequately assess his position and prepare his case.
4. Section 7(4)(b) should be amended to read "the economic or social development of Canada or a province". The addition of "or a province" is consistent with the new national transportation policy described in Section 3(1) of Bill C-18 which states that an "adequate network of viable and effective transportation services...is essential...to maintain the economic well being and growth of Canada and its regions." The memorandum of understanding was signed by Manitoba on the understanding that the impact of a proposed service upon the economic and social development of Manitoba could be considered by the Transport Board. This is a fundamental requirement which must be reflected in the legislation.
5. Subsection 7(6) should be eliminated. It is necessary for Transport Boards to be able to attach conditions to licenses

with respect to such matters as restrictions against the transportation of dangerous goods, compliance with weight limits, fuel tax laws, registration requirements, etc.

6. The national definition of fitness recommended by the Canadian Council of Motor Transport Administrators proposes that "fitness certificates" or licenses issued by one jurisdiction to a carrier domiciled in that jurisdiction be recognized by the other provinces. This will allow a carrier to serve the whole country while having to satisfy only one regulatory body as to its fitness. Therefore, a provision should be added to the Bill as subsection 7(6) as follows:

"Notwithstanding subsection (2), a provincial transport board in a province may accept the findings of a provincial transport board in another province respecting compliance by the applicant for a license to operate an extra-provincial undertaking with the prescribed criteria relating to the fitness of the applicant referred to in subsection (2)".

7. Trade in Trucking Services With the United States and the Potential for American Domination

During the consultations leading up to the preparation of the Bill, there was some discussion respecting the inclusion of provisions to protect the Canadian trucking industry from foreign domination. Manitoba agreed that the taking of any unilateral measures in this regard may provoke severe adverse Congressional reaction in the United States; and the Bill is silent on the subject. At the same time, however, Manitoba urged the Federal Government to immediately fulfill its responsibility in this vital trade area and commence negotiations with the United States with a view to concluding a

bilateral agreement on trade in trucking services. Such an agreement should ensure that the Canadian trucking industry competes on even terms with the American industry, that there exists a minimum level of Canadian control of the trucking capacity of the country and that we maintain an appropriate balance of trade in trucking services. The agreement should also allow for reasonable measures to be taken to ensure an adequate level of highway transport infrastructure and employment, and an appropriate level of service, exists in all regions of Canada.

A bilateral agreement should also provide a more formal and binding dispute resolving mechanism covering international or trans-border issues and sufficient resources must be committed by each government to monitor relevant matters.

A formal bilateral trade agreement on trucking is a natural extension of the Brock-Gotlieb understanding of November, 1982 which ended the moratorium on the granting of operating authorities to Canadian carriers imposed by the United States that year, by the establishment of a Trans-Border Trucking Consultative Mechanism. The letters setting out the understanding contain some recognition of the "differences in the policies and economies of the two countries which may affect the competitive opportunities available to motor carriers", but the understanding falls far short of adequately addressing the issues and providing for their effective resolution.

In your report on the "Freedom to Move" position paper, you recognized the need for a formal bilateral agreement. Your Committee stated:

"... the Committee is sympathetic to the fears of the Canadian trucking industry that it could be swamped by American competition in Canada. However, we are concerned that any marked differences in approach to the control of entry between our system and that of the United States could result in further retaliatory actions against Canadian carriers attempting to obtain U.S. operating authorities.

We believe that the best way to balance and protect trucking interests on both sides of the border is through a permanent mechanism similar to that of the Brock-Gotlieb understanding. This could be achieved through bilateral negotiations which would lead to a formal bilateral agreement on transborder trucking operations."

"We share the Canadian trucking industry's concern regarding the question of foreign ownership. So much so that we believe special treatment is warranted for the industry. We think the same approach should be taken as we recommended for the airline industry; that is to say, the extension of the proposal in Freedom to Move to control domestic mergers and acquisitions to cover all proposed foreign acquisitions of Canadian trucking companies, no matter their gross asset value."

We would ask that you urge the Government to pursue this agreement with the U.S. government forthwith.

8. It is imperative that the National Safety Code be implemented before introducing the new "reverse onus" entry regime proposed in Bill C-19. The new entry standard is expected to allow large numbers of small truckload carriers to operate. Without substantially enhanced levels of enforcement of safety standards and monitoring levels of compliance, competition may well lead to a significant deterioration of safety on the nation's highways. Accordingly, the safety needs must be fully satisfied before implementation of the "reverse onus" test.

VIII. CONCLUSIONS

1. Meaningful consultation must continue between the federal government and the provinces and territories.
2. The federal government must proceed cautiously in implementing regulatory reform. The legislation must be flexible to adapt to problems of users, carriers, labour and the public.
3. Public disclosure of carrier costing is essential in the new regime to provide a more equitable balance in shipper/carrier rate negotiations.
4. Sufficient research resources and staff are required to effectively administer and monitor the new regime. The impact of regulatory reform must be monitored and assessed. Grants to universities for transportation research be restored to insure that there are adequate resources available.
5. Manitoba will not support any program that refuses to consider the need for protecting the interests of transport sector employees including:
 - job security;
 - retraining programs;
 - provision of alternate employment.
6. Regulatory controls must counter the relative lack of effective intermodal and intramodal competition in many regions of Canada.
7. There must be no sacrifice of safety in implementing the new regulatory regime.

8. Carriers must be compensated for the actual costs incurred in the provision of all imposed services.
9. There must be adequate safeguards to protect and promote the interests of small and captive shippers and communities.
10. The new regime must recognize the requirement for transportation to be used as a tool for promoting regional economic development. Commercial viability of transportation links must be balanced with regional economic objectives. The federal government should sponsor transport programs to avoid a growing economic opportunity gap between the "have" and "have not" provinces.
11. The federal government must make funds available to the provinces and municipalities to defray the additional costs incurred on the road system as a result of rail line abandonment.
12. The federal government should sponsor the maintenance and upgrading of the interprovincial highway system.
13. Bilateral discussions with the United States should commence immediately to protect the future integrity of the Canadian transport system and transport employees.
14. Federal subsidization of the transport system will continue to be necessary if Canadian shippers are to be competitive with suppliers from other countries subsidizing their exports.